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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW SANDOVAL,

Defendant and Appellant.

G057558

(Super. Ct. No. 98NF0649)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kimberly Menninger, Judge. Affirmed.

Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

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In 2001, defendant Matthew Sandoval was convicted of attempted murder as an aider and abettor. In 2018, the Legislature limited accomplice liability for murder. Generally, accomplices can no longer be convicted of murder under the felony-murder rule or the natural and probable consequences theory. The Legislature also enacted a statute allowing accomplices previously convicted of murder to petition trial courts to vacate their murder convictions and be resentenced. (Pen. Code, § 1170.95.)¹

Sandoval filed a petition under section 1170.95. The trial court denied Sandoval’s petition because he was convicted of attempted murder, not murder.

Sandoval appeals, arguing the Legislature intended to include attempted murder under section 1170.95. We disagree and affirm the order of the trial court.

I

FACTS AND PROCEDURAL HISTORY

In January 1998, Sandoval and two fellow gang members drove into a rival gang’s territory. One of Sandoval’s accomplices fired a gun at a rival gang member. A jury convicted Sandoval of attempted murder and related crimes; the jury also found true related sentencing enhancements. The trial court imposed a sentence of 32 years to life. This court affirmed the judgment on direct appeal.

In March 2019, Sandoval filed a section 1170.95 petition. Sandoval declared, “I am eligible for relief . . . because I was convicted of attempted murder . . . under the natural and probable consequences doctrine” The trial court summarily denied Sandoval’s petition. According to the court’s minutes order: “The petition does not set forth a prima face [*sic*] case for relief under the statute. A review of court records indicates defendant is not eligible for relief under the statute because the defendant does not stand convicted of murder”

¹ Further undesignated statutory references are to the Penal Code.

II DISCUSSION

Sandoval argues section 1170.95 applies to convictions for attempted murder. This is a pure legal issue involving statutory interpretation; therefore, our review is de novo. (See *People v. Gonzalez* (2017) 2 Cal.5th 1138, 1141.)

A. Principles of Statutory Interpretation

When construing a statute, our goal is to ascertain legislative intent to effectuate the purpose of the law. (*People v. Jefferson* (1999) 21 Cal.4th 86, 94.) The words of a statute are to be given their usual and ordinary meaning. (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 744.) If the statutory language is unambiguous, “we presume the Legislature meant what it said, and the plain meaning of the statute governs.” (*People v. Robles* (2000) 23 Cal.4th 1106, 1111.)

Courts may neither insert words nor delete words in an unambiguous statute; the drafting of statutes is solely a legislative power. (*People v. Hunt* (1999) 74 Cal.App.4th 939, 945-946.) “In construing this, or any, statute, our office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute to conform to an assumed intention that does not appear in its language.” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253.)

“Statutory language is not considered in isolation. Rather, we ‘instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.’” (*Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1261.) We must also “interpret legislative enactments so as to avoid absurd results.” (*People v. Torres* (2013) 213 Cal.App.4th 1151, 1158.)

B. The Statutory Framework and Language of Section 1170.95

“Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.” (§ 187, subd. (a).) Though under the felony-murder rule, a defendant can be convicted of murder without malice if a victim is killed during a designated inherently dangerous felony. (See CALCRIM No. 540A [“A person may be guilty of felony murder even if the killing was unintentional, accidental or negligent”].)

Generally, a defendant may be convicted of a crime either as a perpetrator or as an aider and abettor. (§ 31.) An aider and abettor can be held liable for crimes that were intentionally aided and abetted (target offenses); an aider and abettor can also be held liable for any crimes that were not intended but were reasonably foreseeable (nontarget offenses). (*People v. Laster* (1997) 52 Cal.App.4th 1450, 1463.) Liability for intentional, target offenses is known as “direct” aider and abettor liability; liability for unintentional, nontarget offenses is known as the ““natural and probable consequences” doctrine.” (*People v. Montes* (1999) 74 Cal.App.4th 1050, 1055.)

Effective January 1, 2019, the Legislature enacted Senate Bill No. 1437 (2017-2018 Reg. Sess.) to “amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f).) The Legislature amended section 188 (defining malice), and section 189 (defining the degrees of murder).

As a result of Senate Bill No. 1437, the Legislature also added section 1170.95 (Stats. 2018, ch. 1015, § 4, eff. Jan. 1, 2019), which provides a procedure for aiders and abettors to challenge their previous murder convictions. In relevant part, the statute provides:

“(a) A person *convicted of felony murder or murder* under a natural and probable consequences theory may file a petition with the court that sentenced the

petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

“(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of *felony murder or murder* under the natural and probable consequences doctrine.

“(2) The petitioner was convicted of *first degree or second degree murder* following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for *first degree or second degree murder*.

“(3) The petitioner could not be convicted of *first or second degree murder* because of changes to Section 188 or 189 made effective January 1, 2019.” (§ 1170.95, subd. (a), italics added.)

C. Analysis

Senate Bill No. 1437 affects murder convictions; it does not apply to convictions for attempted murder. None of the added or amended sections make any reference to attempted murder. (§§ 188, 189, 1170.95.) “If the plain language of the statute is clear and unambiguous, [the courts’] inquiry ends, and [one] need not embark on judicial construction.” (*People v. Johnson* (2002) 28 Cal.4th 240, 244.)

Another appellate court recently held that Senate Bill No. 1437 does not apply to the crime of attempted murder. (*People v. Lopez* (2019) 38 Cal.App.5th 1087, 1104-1105 (*Lopez*).) In *Lopez*, the appellate court concluded the “Legislature’s obvious intent to exclude attempted murder from the ambit of the Senate Bill [No.] 1437 reform” was evidenced by the language of section 1170.95 itself, as it limits its application to murder convictions. (*Lopez, supra*, 38 Cal.App.5th at pp. 1104-1105.) The court further observed: “The plain language meaning of Senate Bill [No.] 1437 as excluding any relief for individuals convicted of attempted murder is fully supported by its legislative history.” (*Id.* at p. 1105.) The court noted the Legislature consistently referred to relief

being available to only those defendants charged with first or second degree felony murder or murder under the natural and probable consequences doctrine, and to only those defendants sentenced to first or second degree murder. (*Ibid.*)

We agree with the *Lopez* court. (See accord *People v. Munoz* (2019) 39 Cal.App.5th 738, 753-754 (*Munoz*) [Senate Bill No. 1437 does not apply to defendants convicted of attempted murder].) Thus, as Sandoval was not convicted of murder, the trial court did not err by summarily denying his section 1170.95 petition.

Sandoval argues that *People v. King* (1993) 5 Cal.4th 59 (*King*), compels a different result. We disagree. In *King*, there had been several changes over time to interrelated statutes in the Penal Code and the Welfare and Institutions Code. Appellate courts had interpreted the statutes in way that resulted in a sentencing anomaly: certain juveniles convicted of first degree murder were eligible for commitment to the former California Youth Authority (CYA), but similar juveniles convicted of attempted first degree murder were required to be confined in prison. (*Id.* at pp. 64-70.) The California Supreme Court disagreed, holding that the Legislature “did not intend a lesser included offense to have potentially harsher penal consequences than the greater offense. Defendant should not be penalized because one of his victims survived; he should not be made to regret not applying the coup de grace to that victim.” (*Id.* at p 69.)

Here, unlike *King*, Senate Bill No. 1437 “is not the result of a disjointed series of amendments over time . . . from which we might infer inadvertence or irrationality [on the part of the Legislature]. Instead, the relevant provisions are contained in a single cohesive bill.” (*Munoz, supra*, 39 Cal.App.5th at p. 759.) Further, in the situation described in *King, supra*, 5 Cal.4th 59, “first degree murderers under 18 were eligible for CYA, whereas persons of the same age who committed attempted murder were not. Here, in contrast, Senate Bill [No.] 1437 does not mandate that persons convicted of attempted murder are punished more severely than persons convicted of murder. Attempted murderers are statutorily subject to a lesser, not a greater, penalty

than murderers. Senate Bill [No.] 1437 does not require that attempted murderers receive a harsher sentence, or prohibit them from receiving a more lenient sentence, than murderers.”² (*Munoz, supra*, 39 Cal.App.5th at p. 759.) In sum, the California Supreme Court’s holding in *King, supra*, 5 Cal.4th 59, does not alter our analysis.

Finally, Sandoval argues that Senate Bill No. 1437 violates equal protection principles. We disagree. ““Persons convicted of *different* crimes are not similarly situated for equal protection purposes.” [Citations.] “[I]t is one thing to hold . . . that persons convicted of the *same crime* cannot be treated differently. It is quite another to hold that persons convicted of *different crimes* must be treated equally.”” (*People v. Barrera* (1993) 14 Cal.App.4th 1555, 1565.)

Here, through Senate Bill No. 1437 and section 1170.95, the Legislature has determined that accomplices convicted of murder are to be treated differently than those convicted of other crimes. This legislative judgment simply does not implicate equal protection principles. (See *Munoz, supra*, 39 Cal.App.5th at p. 760 [“The remedy for any potentially inequitable operation of section 1170.95 lies with the Legislature. If the Legislature concludes it is unwise or inequitable to exclude attempted murderers from Senate Bill [No.] 1437’s reach, it has only to amend the law”].)

² Generally, “murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life.” (§ 190, subd. (a).) Further, “murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.” (§ 190, subd. (b).) The punishment for attempted crimes is usually half of that for completed crimes. “However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years.” (§ 664, subd. (a).)

III

DISPOSITION

The trial court's order denying the section 1170.95 petition is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

THOMPSON, J.

DUNNING, J.*

*Retired Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.